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Delusions and Testamentary Capacity

Introduction

I was recently retained by a sister of a deceased person who advised that in her opinion, she had been disinherited from her late brother's Will as a result of his cocaine abuse. She asserted he may have been delusional about her at the time he made his last Will. My client was a nurse who had cared for her brother in previous years when he had been alcoholic and had suffered a stroke. They had been close. She gave me many examples of the deceased's increasingly paranoid behaviour prior to his death. This somewhat bizarre behaviour had been noted in medical files.

My client explained that the pivotal event occurred when the deceased had asked her to call the police if she had not heard from him by a certain time. When she had not, she called the police. They attended and took the deceased to hospital. He was diagnosed as being in a cocaine-induced psychosis. The police seized his guns. The deceased blamed the sister for the seizure and increasingly came to blame his sister for meddling in his life and causing virtually all his myriad problems. His behaviour was verified by many independent witnesses.

The deceased drew a new Will disinheriting his sister and siblings, and left his estate to charity. His prior Will left his estate to his sister and siblings.

The lawyer who drew the Will noted the deceased was angry at his sister for meddling in his affairs. He thought the deceased had testamentary capacity.

The case was complicated by the fact

that the deceased was murdered. Maybe he was not paranoid after all?

Most legal challenges relating to capacity to make a Will involve a testator suffering from senile dementia. These cases typically involve aged testators whose mental functioning may be so reduced by dementia, they lack sufficient capacity to prepare a Will. Most practitioners are aware of dementia-related concerns and take appropriate steps to assess the mental status of the testator.

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Far less frequently challenged, however, are Wills made by delusional testators. These involve cases where it is alleged that the testator suffered from a delusion that affected his or her decision concerning the Will, to the extent that the testator was not legally capable of preparing a Will.

The purpose of this article is to examine the law relating to testamentary capacity and delusions.

What is Testamentary Capacity ?

It is trite law to state that a person must be of "sound mind, memory, and understanding" to be able to make a valid Will. The testator must understand

the nature and quality of the act of preparing a Will.

In a leading Canadian case *Leger v. Poirier* 1944 3 D.L.R. 1 (SCC) Justice Rand, speaking for the Supreme Court of Canada, said that a "disposing mind and memory" is:

capable to comprehend, of its own initiative and volition, the essential elements of Will making, property, objects, just claims to consideration, revocation of existing disposition, and the like.

A leading English case of *Banks v. Goodfellow* 1870 LR 5 QB 549, sets out four criteria for the test of mental capacity to make a Will.

- I. The testator understands he is making a Will and that a Will disposes of property upon his death.
- II. The testator must know the assets he disposes of; that is, he understands the nature and extent of his property.
- III. The testator understands and appreciates the claims to which he ought to give effect, that is, those who have an appropriate claim upon his bounty.
- IV. **The testator must be free of delusions that may affect his decision.**

These four criteria, read together, have consistently been adopted by Canadian courts as the standard test for testamentary capacity.

What is a Delusion?

A delusion is a belief in a state of facts that no rational person would believe. Delusions are beliefs that are not backed up by reality. They may remain despite obvious evidence to the contrary, and the fact that nobody else believes them to be true. The delusions are often accompanied by hallucinations and/or feelings of paranoia, which act to strengthen confidence in the delusion. Delusions are distinct from cultural or religious-based beliefs, which may be seen to be untrue by outsiders.

Delusions are a common symptom of several mood and personality-related mental illnesses. These may include schizophrenia, shared psychotic disorder, major depressive disorder, and bipolar disorder. They are also the major feature of delusional disorder. Delusions are often common among substance abusers of amphetamines, cocaine, and hallucinogens.

Delusional disorders are a form of psychosis in which a person has paranoid delusions, often long-lasting, with no obvious physical or medical basis for the delusion. Delusional disorders are relatively uncommon. They affect roughly 1 in 3333 people, and most commonly start between the ages of 40 and 55 years of age. Delusions are suffered slightly more commonly by women than by men.

What is a Psychosis?

A psychosis is a mental disorder characterized by extreme impairment of a person's ability to think clearly, respond emotionally, communicate effectively, understand reality, and behave appropriately. Psychotic symptoms interfere with a person's daily functioning and can be quite debilitating.

People with paranoid delusions are often very suspicious about receiving any treatment. They typically do not believe there is anything wrong with them; the suggestion that they get medical help may only serve to exacerbate their paranoid delusions and thus make things worse.

Categories of Delusional Disorders

Individuals with delusional disorder suffer from long-term, complex delusions

that typically fall to one of six categories: persecutory, erotomantic, somatic, grandiose, jealousy, or mixed.

A brief explanation of the six categories

1. Persecutory

Individuals with persecutory delusional disorder are plagued by feelings of paranoia and an irrational yet unshakable belief that someone is plotting against them, or up to harm them. Paranoid delusions are beliefs of a suspicious nature, where the person believes something is not right with him or herself, another person or persons, or the world in general, which poses serious problems for the individual.

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2. Erotomantic

Individuals with this disorder believe that another person, often a stranger, is in love with them. The object of their affection is typically of a higher social status, sometimes a celebrity. This type of delusional disorder often leads to stalking or other potentially dangerous behaviour. Many of us have read about the long-time fixation of the Saskatchewan farmer and his obsessive love for Anne Murray.

3. Somatic

Somatic delusions involve the belief that something is physically wrong with the individual. The delusion may involve a medical condition or illness or perceived deformity. This condition differs from hypochondria in that the deformity or illness is perceived as a fixed condition and not temporary.

4. Grandiose

Individuals with grandiose delusional disorder have an overinflated sense of self-worth. Their delusion centres on their own importance, such as

believing they have done or created something of extreme value. They often believe they have a special mission in life.

5. Jealousy

Jealous delusions are unjustified and irrational beliefs that an individual spouse or significant other has been unfaithful.

6. Mixed

Mixed delusions are those characterized by two or more of the aforesaid five categorizations.

Legal Discussion

A person may suffer from a delusion or delusions that might outwardly make them appear to be insane, and yet they may still be capable of making a Will.

An insane person may still have testamentary capacity if he or she holds irrational beliefs that have no relation to his or her property or to the persons that might be expected to benefit. A delusion that affects testamentary capacity must be one of insanity, as opposed to capricious whims or idiosyncrasies.

It is often a difficult task for the court to decide whether the testator was merely eccentric in not adequately providing for those attacking the Will, or alternatively, he was actually suffering from delusions that were the cause of the failure to provide for the disappointed beneficiary.

As stated in the case of *Banks v. Goodfellow*, *ibid*,

the existence of the delusion, compatible with the retention of the general power and faculties of the mind, will not be sufficient to overthrow a Will, unless it were such as was calculated to influence the testator in making it.

In fact the testator in that case had spent some time in an insane asylum and remained subject to certain fixed delusions that he was molested by evil spirits. The English Court of Appeal upheld his Will because of the absence of any reasonable connection between the delusions and the dispositions made by the testator. His Will was in fact rational in the sense that he left his assets to his nearest relative.

The courts have consistently found that, for a delusion to affect testamentary capacity, the delusion must have such a hold on the testator's mind that it governs the making of the Will.

Lucid Intervals

A further complication is the fact an individual may suffer general insanity and incapacity to make a Will, but may experience lucid intervals. If the testator was in fact lucid for such an interval, then the Courts may determine that he or she had sufficient capacity to properly give instructions and execute a Will.

An additional difficulty for the practitioner is the fact that people with delusions are often very firm in their beliefs and can appear totally rational and competent. They are often very good at concealing that they are under an insane delusion.

The decision of *Skinner v. Farquharson* 1902 32 S.C.R. 58 case held that the capacity required of a testator is that he should be able rationally to

consider the claims of all those who are related to him and who, according to the ordinary feelings of mankind, are supposed to have some claim to his consideration when dealing with his property as it is to be disposed of after his death. It is not sufficient that the Will upon the face of it should be what might be considered a rational Will. The Court found that it is necessary to go below the surface and consider whether the testator was in such a state of mind that he could rationally take into consideration not merely the amount and nature of his property, but the interest of those who, by personal relationship or otherwise, had claims upon him.

The *Skinner* decision went on to say at page 69 that:

it is not the law that anyone who entertains wrongheaded notions, capricious whims, or absurd idiosyncrasies cannot make a Will. The existence of an insane delusion did not necessarily mean an absence of testamentary capacity. There must

be evidence that the delusion, if it existed, controlled the testator's mind and prompted him to execute the Will in question.

Justice Sedgewick stated at page 66 that an insane delusion is defined to be: a belief of things as realities which exist only in the imagination of the patient, and the incapacity of the mind to struggle against the delusion constitutes an unsound frame of mind.

Justice Sedgewick also dealt with lucid intervals, and defined same at page 67 as:

...by the term "lucid interval," it was said by Lord Thurston in *A. G. v. Parnter* (1793), 3 Bro. C.C. 409, 29 E.R. 962, is not meant "merely a cooler moment, an abandonment of pain or violence or of a higher state of torture, a mind relieved from excessive pressure but an interval in which the mind having thrown off the disease had recovered its general

habit. In *Waring v. Waring* (1848), 6 Moo. P.C. 341, 354, 13 E.R. 715, it is said that “a lucid interval is not the mere absence of the subject of the delusion from the mind.” By a lucid interval is not meant a concealment of delusions, but their total absence, their non existence in all circumstances and a recovery from the disease and a subsequent relapse.

In *Montreal Trust Co. v. McKay* (1957) 21 W.W.R. 611 (Alta. T.D.) at page 613, the trial judge stated as follows: The testator may be capable of transacting business even of an intricate nature, but may be incapable of making a Will if he has psychotic delusions towards the persons whom we should ordinarily consider as having a claim on his bounty at the time of the making of the Will, and this is so even if he appeared to make a reasonable provision for these persons. Such factors are important in deciding if he was suffering from delusions. But if in fact it is proven that he had delusions directed towards those persons to whom he should normally be giving consideration, the testamentary capacity may not be there irrespective of what he actually provided in the Will.

A review of the case law relating to delusions and capacity makes it clear that before the court will set aside a Will on the ground that the testator was subject to insane delusions, it must be sure that such delusions influenced the dispositions made by him by his Will.

It is not always easy, however, to predict whether or not a court will find that the delusions influenced the dispositions made by the testator in the Will, so as to find a lack of capacity.

For example, in the decision *Momberg v. Jones* 32 W.L.R. 513, the testatrix was dying of uremic poisoning, the result of the disease from which she suffered. The testatrix entertained the entirely unfounded belief that her husband had poisoned her. The court

nevertheless found that the testator had testamentary capacity.

On the other hand, the following are three examples of cases where the courts found the delusions were such as to make a finding of lack of testamentary capacity.

a. *Ouderkirk v Ouderkirk* (1936) S.C.R. 619

In this case, the testator laboured under the permanent delusion that his wife, who was 70 years of age, was entertaining men for immoral purposes. He left his wife the sum of \$5 a year, and stated that he wanted to provide a home for her.

The Supreme Court of Canada held that the testator was suffering under delusions, and that the delusions were undoubtedly of the nature calculated to affect the disposition of his property. Since the delusions were of such a nature, the condition of testamentary power failed.

The delusional client may be extremely difficult to detect while taking instructions because the client will not necessarily appear psychotic or strange.

b. *Reference Re Grant Estate* (1944) 1 W.W.R. 71

The Manitoba Court of Appeal held the testator, who believed he was hounded by the devil, was mentally incompetent because he had been influenced to dispose of his property in a way that he would not have done if he had been of sound mind. The court followed the *Ouderkirk* decision.

c. *Re Cadman* 28 Man. R. (2d) 130

In this case, a testatrix named her niece as sole beneficiary in a 1977 Will. A close relationship had existed between the testatrix and the niece until 1981. The testatrix suffered a stroke, and formed the impression thereafter that her niece was attempting to “clean her out.” In a 1982

Will, the testatrix named different beneficiaries. The niece was successful in setting aside this 1982 Will.

The evidence disclosed that the testatrix suffered from delusions as to her niece’s intentions, to the extent that the testatrix was incapable of making sound decisions at the time of making her 1982 Will. The court held that no rational motive existed for the testatrix to change her beneficiary.

Burden of Proof

In *Re Barter Estate*, (1939) 2 D.L.R. 201, the New Brunswick Court of Appeal dealt with a Will that was attacked on the grounds that the deceased had been suffering from insane delusions with respect to his daughter for some time prior to making his Will. It was alleged that these delusions affected him in the making of bequests to his daughter.

The Probate Court Judge found that, with one exception, the alleged delusions appeared to be transitory. He upheld the Will, holding that the burden of proof was on the party setting up the insane delusions. He ruled that those opposing the Will had not satisfied that burden.

The appeal was allowed, and a finding was made that the Probate Court Judge was in error as to the burden of proof. Once the delusions affecting his daughter had been proved to exist, it was for the proponents of the Will to remove them.

The Court stated,

the burden of proof in the sense of the burden of “going forward” in a case of this kind is upon the party alleging insane delusions but when evidence of such delusions has been given, even though not conclusive or not preponderant, a jury, if there is one, must be directed that if their minds are left in doubt, they must find against the validity of the Will. The same rule must govern a Judge sitting as a jury. In the present case, it was for the proponents of the Will to adduce preponderating evidence that the delusions or insane ideas could not reasonably be conceived to

have had anything to do with the deceased's power of considering the claims of his relations upon him and the manner in which he should dispose of his property.

In another Supreme Court of Canada decision, *O'Neil v. Royal Trust Co.* [1946] S.C.R. 622 (S.C.C.), the testatrix was subject to hallucinations and delusions which "at times" disturbed her but "were never very fixed at any time." The testator smelled either gas or dusting powder in her room and she was tasting poison in her food. It was conceded that she was generally rational, that she had a good memory, and that she was conversant with her husband's estate and with the contents of the two first Wills.

At page 632 Justice Estey made the following comments:

The decision of *Banks v. Goodfellow* makes it clear that these early authorities go too far. That while the burden of proof always rests upon the parties supporting the Will, and that

the existence of proved hallucinations and delusions often presents a "difficult and delicate investigation," it remains a question of fact to be determined as in civil cases by a balance of probabilities. In the determination of this fact, the contents of the Will and all the surrounding circumstances must be considered by the jury or the Court called upon to arrive at a decision. If satisfied that at the relevant time, the testator was not impelled or directed by hallucinations or delusions and was in possession of testamentary capacity, the Will is valid.

Conclusion

I venture to say that most practitioners are not attuned to the need to be on guard for delusional clients. The delusional client may be extremely difficult to detect while taking instructions because the client will not necessarily appear psychotic or strange. The client may present as rational and sane, but hold very firm opinions that could in fact be delusional. The client will

most likely be guarded or even refuse to be closely questioned about his or her firm beliefs.

Being more aware of this fascinating area of potential concern will assist the practitioner in dealing with such a client. ▲

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